



This document is scheduled to be published in the Federal Register on 07/09/2013 and available online at <http://federalregister.gov/a/2013-16345>, and on FDsys.gov

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2009-0710; FRL -9831-1]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Interstate Transport of Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a portion of a State Implementation Plan (SIP) submittal from the State of New Mexico to address Clean Air Act (CAA or Act) requirements that prohibit air emissions which will contribute significantly to nonattainment or interfere with maintenance in any other state for the 2006 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS). EPA has determined that the existing SIP for New Mexico contains adequate provisions to prohibit air emissions from significantly contributing to nonattainment or interfering with maintenance of the 2006 24-hour PM_{2.5} NAAQS (2006 PM_{2.5} NAAQS) in any other state as required by the Act.

DATES: This final rule is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2009-0710. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act Review Room between the hours of 8:30 am and 4:30 pm weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Young, Air Planning Section (6PD-L), U.S. EPA Region 6, 214-665-6645, young.carl@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” means EPA.

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I. Background

The background for today's action is discussed in detail in our March 12, 2013 proposal (78 FR 15664). In that notice, we proposed to approve a portion of a SIP submittal dated June 12, 2009, from the State of New Mexico to address CAA section 110(a)(2)(D)(i)(I) requirements that prohibit air emissions which will contribute significantly to nonattainment or interfere with maintenance in any other state for the 2006 PM_{2.5} NAAQS. Specifically, we proposed to determine that the existing SIP for New Mexico contains adequate provisions to prohibit air emissions from significantly contributing to nonattainment or interfering with maintenance of the 2006 PM_{2.5} NAAQS. We received one comment from a citizen supporting our proposal. The comment letter is available for review in the docket for this rulemaking. We did not receive any adverse comments regarding our proposal.

II. Final Action

We are approving a portion of a SIP submittal for the State of New Mexico submitted by the Governor on June 12, 2009, to address interstate transport for the 2006 PM_{2.5} NAAQS. Based on EPA's evaluation of the State's technical analysis addressing the requirements of CAA section 110(a)(2)(D)(i) for the 2006 PM_{2.5} NAAQS, with EPA's additional analysis and technical information, we approve the portion of the June 12, 2009 SIP submittal determining the existing SIP for New Mexico contains adequate provisions to prohibit air emissions from

contributing significantly to nonattainment or interfering with maintenance of the 2006 PM_{2.5} NAAQS in any other state as required by CAA section 110(a)(2)(D)(i)(I). This action is being taken under section 110 of the Act.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days

after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 25, 2013.

Samuel Coleman, P.E.,
Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG – New Mexico

2. The second table in § 52.1620(e) entitled “EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP” is amended by revising the entry for “Infrastructure for 2006 PM_{2.5} and Interstate Transport regarding noninterference with other states’ programs for PSD for the 2006 PM_{2.5} NAAQS” to read as follows:

§ 52.1620 Identification of plan

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(e) * * *

**EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW
MEXICO SIP**

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
* * * * *				

Infrastructure for 2006 PM _{2.5} NAAQS	Statewide, except for Bernalillo County and Indian country	6/12/2009	[Insert date of FR publication] [Insert FR page number where document begins]	1/22/2013, (78 FR 4337): Approval for 110(a)(2)(A), (B), (C), (D)(i)(II) (PSD portion), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). [Insert date of FR publication], ([Insert FR page number where document begins]): Approval for 110(a)(2)(D)(i)(I).
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[FR Doc. 2013-16345 Filed 07/08/2013 at 8:45 am; Publication Date: 07/09/2013]